



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

Ms. Vickie Reeck  
Community & Economic Development Director  
City of Fort Dodge, Iowa  
819 1<sup>st</sup> Avenue South  
Fort Dodge, Iowa 50501

Re: Sunshine Laundry Site, 2422 5<sup>th</sup> Avenue South, Fort Dodge, Iowa

Dear Ms. Reeck:

Thank you for contacting the U.S. Environmental Protection Agency, Region 7, concerning the City of Fort Dodge's plans to acquire the property referenced above (the "Property"). In our conversation, you described the city's option to obtain ownership of the Property in June 2021 and requested that the EPA provide you with a Superfund comfort/status letter prior to closing.

Pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),<sup>1</sup> the EPA's mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the EPA's 2019 Comfort/Status letter policy.<sup>2</sup> The purpose of this comfort/status letter includes providing the city with information that may be relevant to potential CERCLA liability concerns you have identified at the Property and summarizing relevant information available to the EPA as of the date of this letter. We hope this information will enable the City of Fort Dodge to make informed decisions regarding the Property's cleanup status and CERCLA's liability protections as the city moves forward with decisions concerning the Property.

### **Property Status**

Information on sites that are, or potentially are, contaminated with hazardous substances and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in the EPA's Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been EPA regional office involvement under Superfund. In addition to the EPA's public repository, the Iowa Department of Natural Resources also maintains a Contaminated Sites Database, which is available at <https://programs.iowadnr.gov/contaminatedsites/>.<sup>3</sup>

The EPA refers to the Property located at 2422 5<sup>th</sup> Avenue South in Fort Dodge, Iowa, as the Sunshine Laundry, Fort Dodge Site ("Site"). This Site is located in SEMS but is not on the National Priorities List

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<sup>1</sup> 42 U.S.C. §§ 9601, *et seq.*

<sup>2</sup> See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

<sup>3</sup> "Sunshine Laundry, Fort Dodge," IOWA DEP'T OF NAT'L RESOURCES, available at <https://programs.iowadnr.gov/contaminatedsites/Site/Detail/1216>.

(NPL). For the reasons described below, the EPA is currently investigating the Site under Superfund authority.

## **History and Status of the Site**

The Property was historically operated as a dry-cleaning facility. A Phase I Environmental Site Assessment (ESA) concluded that PCE stored under prior ownership in a shed on the eastern portion of the Property had occasionally leaked, impacting soil and groundwater beneath the Property. To determine the extent of contamination, a Phase II ESA was prepared in 2008. As part of this investigation, soil and groundwater samples were collected from ten locations and analyzed for volatile organic compounds, or VOCs. Sub-slab soil vapor samples were also collected in two locations beneath the slab of the main building and analyzed for various contaminants, including the VOCs PCE and TCE. The results of this Phase II sampling determined that soil and groundwater had been significantly impacted by the historical release of PCE on the Property. Consequently, IDNR required additional environmental sampling, but that assessment (completed in 2010) did not fully define the extent of the groundwater contaminant plume.

Thereafter, in 2010 and 2011, IDNR obtained access to conduct groundwater sampling on two nearby commercial properties and also sampled permanent groundwater wells previously installed on the Property, all of which were analyzed for PCE; TCE; cis-1,2-DCE; trans-1,2-DCE; and vinyl chloride. IDNR collected another round of groundwater samples from five of six wells on the Property in 2014. Based on these sampling efforts, IDNR concluded in 2014 that a significant amount of contamination remained at the Site and potential existed for vapor intrusion concerns within the building. The department communicated its findings to the current property owner in 2014, observing that groundwater conditions are stable but also stating that “[a]ny change in the configuration of the existing [paved area and building footprint] may have the possibility of mobilizing the groundwater plume.”

In January 2021, IDNR requested assistance from EPA to assess the Property. The EPA, IDNR and the City of Fort Dodge participated in a conference call regarding previous environmental assessments and potential plans for the City of Fort Dodge to redevelop the Property. After the call, the EPA’s hydrogeologist reviewed existing sampling data and recommended that further assessment be completed based on the risk of contaminant impacts to human health and the environment. In April 2021, EPA tasked its contractor to conduct an Integrated Removal Assessment of the Site. A Quality Assurance Project Plan (QAPP) has been drafted and approved by the EPA, and sampling is scheduled to begin the week of June 7, 2021.

## **Reuse of the Property**

Based on the information you provided, the EPA understands that the City of Fort Dodge intends to acquire the Property in June 2021. We also understand that the existing building will be demolished and the building footprint paved with asphalt for use as a parking lot. As of the date of this letter, the EPA has not identified any obvious incompatibility between the preexisting environmental conditions and the city’s proposed use of the Property as you have described it to the agency. As the city’s plans develop further, we request that you continue to discuss the development with us and recommend that you consult with your own legal counsel and environmental professional to ensure that the proposed use will not negatively influence or cause exposure to soil and groundwater contamination remaining on the Property.

## **CERCLA's Bona Fide Prospective Purchaser Liability Protection**

The EPA understands that you are interested in information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

The EPA has issued guidance discussing some of the BFPP criteria.<sup>4</sup> Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

Among other criteria outlined in CERCLA, a BFPP must provide full cooperation, assistance, and access to persons who are authorized to conduct response actions at a site. In addition, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.<sup>5</sup>

As described above, IDNR has performed environmental investigations at the Site that have determined that soil and groundwater beneath the Property are contaminated with certain VOCs. In addition, these VOCs may potentially result in vapor intrusion to indoor air of enclosed buildings situated above contamination. Based on the information that the EPA has evaluated to date, we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

- Ensure appropriate measures are implemented during any construction to minimize the potential for excess worker exposure to soils at the Property impacted by contamination.
- If management of contaminated soils is needed to facilitate development activities, manage such soils appropriately to avoid human and natural resource exposure.
- Maintain the integrity of asphalt and other paved surfaces on the Site.
- Do not install any above-ground or subsurface structures that may create or impact potential exposure pathways without first obtaining EPA approval.
- Do not perform any activities or construct any structures that will or may interfere with the EPA's investigation or exacerbate contaminated soil and groundwater conditions at the Site.
- Install vapor barriers or other suitable vapor intrusion mitigation measures in future buildings on the property as deemed necessary by the EPA.

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<sup>4</sup> "Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")" (July 29, 2019), available at <https://www.epa.gov/enforcement/common-elements-guidance> ("Common Elements Guidance").

<sup>5</sup> See Common Elements Guidance, Attachment B, "Reasonable Steps Categories and Examples."

- Prohibit public or private well installation on the Property for irrigation or consumption purposes.
- Ensure that all environmental response actions are performed in accordance with all applicable local, state, and federal laws and regulations.

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable step whether or not the EPA has identified any such steps.<sup>6</sup> We recommend that you consult with your environmental professional and legal counsel to ensure that you take the reasonable steps necessary with respect to any hazardous substance contamination.

### **State Actions**

The EPA is only able to provide you with information about federal Superfund actions at the Site, federal law and regulations, and agency guidance. For information about potential state actions and liability issues, please contact Hylton Jackson, IDNR's project manager, at (515) 725-8338.

### **Conclusion**

The EPA remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes that the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about Site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact Todd Davis, EPA Region 7's Site Assessment Manager, (913) 551-7749.

Sincerely,

Jared Pessetto  
Attorney-Adviser  
Office of Regional Counsel

cc: Hylton Jackson, IDNR  
Tonya Howell, EPA Region 7

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<sup>6</sup> CERCLA § 101(40)(B)(iv) provides that "The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance."